

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:)	CASE NO. 05-97399
)	
GARY ADAMS,)	CHAPTER 13
)	
Debtor.)	

ORDER

This case came before the Court on April 3, 2006, on the motion by the Secretary of Veterans Affairs (“Movant”), as successor in title to SunTrust Mortgage, Inc. ("SunTrust") styled as an amended motion for relief from the automatic stay (#38). The amended motion was filed on March 15, 2006, and Movant filed a supplement to the amended motion on March 24, 2006 (#40). Debtor filed a response in opposition on March 31, 2006 (#42). Matthew Schuh appeared on behalf of Movant, debtor appeared *pro se*, and the Chapter 13 Trustee, James H. Bone, appeared. After carefully considering the pleadings filed, the record of this case, and the arguments raised by debtor and Movant, the Court concludes that the amended motion should be granted. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

The amended motion was filed seeking relief to complete dispossessory proceedings commenced by Movant in the State Court of DeKalb County, Georgia. SunTrust foreclosed on property at 1015 Old Greystone Drive, Lithonia, Georgia 30058 (the “Property”) on June 7, 2005. The Property was sold to Movant, and Movant filed a dispossessory action in the State Court of DeKalb County, Georgia, on July 26, 2005. The State Court granted a writ of possession to Movant, and debtor appealed that decision to the Court of Appeals of Georgia. On March 3,

2006, the Court of Appeals affirmed the state trial court order granting a writ of possession to Movant.

This is Mr. Adams' second bankruptcy case. His first bankruptcy, Case No. 04-70477, was filed as a Chapter 13 case through counsel at Clark & Washington, PC, on July 1, 2004. SunTrust filed a motion for relief from the automatic stay in that case on March 18, 2005, alleging post-petition defaults in mortgage payments. The motion was filed through counsel at McCalla, Raymer, Padrick, Nichols & Clark and asked for permission to institute and complete foreclosure proceedings and to assert all its rights and remedies with respect to the Property. The matter came on for hearing on April 12, 2005. Richard Siegel appeared on behalf of SunTrust, and Jason Lutz appeared on behalf of the debtor. The debtor did not appear, and Mr. Lutz announced that he had no basis to oppose the motion. Accordingly, on April 15, 2005, the Court entered an Order granting the motion for relief from the automatic stay filed by SunTrust.

SunTrust conducted the foreclosure on June 7, 2005.

On June 6, 2005, the debtor filed a *pro se* motion to reimpose the automatic stay, notwithstanding the fact that debtor had counsel of record. The debtor's motion was set for a hearing on July 12, 2005. Mr. Lutz appeared on behalf of the debtor, the debtor appeared, and Michael McCormick of McCalla, Raymer appeared for SunTrust. Mr. McCormick announced that the debtor had made only four post-petition mortgage payments in the one year that he had been in the Chapter 13 case. He also argued that since debtor failed to obtain a reimposition of the stay prior to the foreclosure, the Court had no authority to retroactively void the foreclosure. Counsel announced that debtor was over \$10,000 behind in post-petition payments, and debtor brought \$3,300.00 to the hearing. Mr. Adams stated that he understood his attorneys were going

to file a new case for him prior to the June 7, 2005 foreclosure. The Court concluded that it did not have the authority to retroactively void the foreclosure, and on July 21, 2005, the Court entered an Order denying debtor's motion to reimpose the automatic stay.

Mr. Adams filed this second case, Case No. 05-97399, on October 11, 2005. On October 21, 2005, SunTrust filed a motion for relief from the automatic stay through counsel at Morris, Schneider, & Prior, LLC. In this motion, SunTrust alleged that it was the owner of the Property as the result of a foreclosure which took place on June 7, 2005. The motion alleged that the Property was sold to SunTrust and that the deed under power had not yet been recorded. The motion requested permission to proceed with a dispossessory action and for permission to record the deed under power. At a hearing on this motion on November 15, 2005, Matthew Schuh appeared on behalf of SunTrust, and the debtor appeared *pro se*. On November 11, 2005, the debtor had filed a *pro se* motion to dismiss SunTrust's motion for relief from stay, referencing a transfer from SunTrust to the Secretary of Veterans Affairs, and stating that the motion filed on October 21, 2005, contained incorrect and misleading allegations. Counsel for SunTrust stated that he knew nothing about the statements made by Mr. Adams, because his firm did not handle the foreclosure. The Court advised counsel to file an amendment to his motion within twenty (20) days setting forth an accurate statement of the facts and the relevant parties in interest. Since SunTrust failed to file any amendment to the motion within the twenty days, the Court entered an Order on December 16, 2005, denying SunTrust's motion.

Six days later, on December 21, 2005, SunTrust filed a second motion for relief from the automatic stay, this time alleging that SunTrust was the owner of the Property, that the foreclosure had been conducted by SunTrust on June 7, 2005, and that the deed had been

recorded (#33). The motion did not reference any pending dispossessory proceeding or any pending litigation between the parties. SunTrust initially calendared this motion for January 10, 2006, but the Court reset the matter for January 17, 2006. At the hearing on January 17, 2006, Matthew Schuh appeared for SunTrust, Mr. Bone was present as the Chapter 13 Trustee, and the debtor appeared *pro se*. It became apparent in the course of the hearing that a writ of possession for the Property had been issued by a state court to the Secretary of Veterans Affairs. Mr. Schuh announced that after SunTrust foreclosed on the Property, the Property was deeded back to the guarantor, the Secretary of Veterans Affairs. He further announced that a state court had issued a writ of possession prior to Mr. Adams filing this bankruptcy on October 11, 2005, and that Mr. Adams had sued the Veterans Administration for alleged wrongful foreclosure. Since the motion for relief from automatic stay filed in the Bankruptcy Court had been filed in the name of SunTrust rather than the Secretary of Veterans Affairs, and since it was the Secretary of Veterans Affairs who now owned the Property rather than SunTrust, Mr. Schuh requested permission to make an oral motion to amend his motion to add the Secretary of Veterans Affairs as a moving party. Mr. Adams objected, and the Court declined to grant any oral motion in this case. The Court advised counsel to file an amendment to the pending motion for relief from stay to name the proper parties and set forth in full detail all facts relating to the issuance of any writ of possession or any other pending litigation.

On March 15, 2006, the Secretary of Veterans Affairs, as successor in title to SunTrust, filed an amended motion for relief from the automatic stay, in which it recited in detail the history with respect to both the foreclosure and the dispossessory proceeding involving this Property and this debtor. The Court set the amended motion for hearing on April 3, 2006. At

the April 3, 2006 hearing, counsel for Movant recited the fact that the State Court of DeKalb County actually issued a writ of possession on September 30, 2005, that Mr. Adams had appealed the State Court Order granting a writ of possession, and that on March 3, 2006, the Georgia Court of Appeals affirmed the trial court's Order granting a writ of possession to the Secretary of Veterans Affairs with respect to the Property. Debtor argued that he took issue with the filing of the dispossessory proceeding, contending that the Secretary of Veterans Affairs was not a proper party. It appears that all of the arguments which debtor raised in opposition to the amended motion filed in this bankruptcy proceeding were raised and fully adjudicated by the Georgia courts. The state court issued a writ of possession prior to the bankruptcy filing and debtor appealed that matter in the state courts. The federal bankruptcy court has no authority to sit in review of the state court judgment, and there is no factual or legal basis under which this Court could deny the motion for relief from the automatic stay. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415, 44 S.Ct. 149, 150, 68 L.Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 1315, 75 L.Ed.2d 206 (1983).

In accordance with the above reasoning, the amended motion is hereby granted. The Secretary of Veterans Affairs is granted relief from the automatic stay in bankruptcy so that it may proceed with its dispossessory action. Movant is permitted to execute on this Order, and Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable to this Order.

IT IS SO ORDERED, this ____ day of April, 2006 .

JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order mailed by United States Mail to the following:

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Judicial Assistant to Judge Bihary

Date: _____